

LAW ENFORCEMENT EMPLOYEE-INVOLVED
CRITICAL INCIDENT REPORT



Employer Agency: Rohnert Park Department of Public Safety
Investigating Agency: Sonoma County Sheriff's Office
Injured Subject: Antonio Ramirez-Frati
Date of Incident: January 14, 2018

SONOMA COUNTY DISTRICT ATTORNEY

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I. INTRODUCTION

Antonio Ramirez-Frati (hereafter “Ramirez-Frati”) was born on March 26, 1996. On January 14, 2018, Ramirez-Frati attempted to commit suicide by intentionally forcing five officers from the Rohnert Park Department of Public Safety into a position where each officer individually concluded that it was necessary to discharge his firearm at him to defend human life. The officers thereafter shot Ramirez-Frati, who survived the incident and has recovered from his gunshot wounds.

Pursuant to established protocol, the Sonoma County Sheriff’s Office was called in to conduct the investigation of this incident. The purpose of this protocol is to set forth procedures and guidelines to be used by Sonoma County law enforcement agencies in the criminal investigation of specifically defined incidents involving law enforcement employees. Under the protocol, in order to eliminate the risk or appearance of conflicts of interest, an outside law enforcement agency is to investigate law enforcement employee-involved fatalities. Accordingly, detectives with the Sonoma County Sheriff’s Office assumed responsibility for the investigation of this incident.

The role of the Sonoma County District Attorney’s Office in a law enforcement employee-involved critical incident is to review the investigation to determine if there exists any criminal liability on the part of the law enforcement employee; to provide assistance to the investigating agency regarding legal issues; to supplement the investigation when necessary; and, when appropriate, prosecute those persons believed to have violated the criminal law.

Once the investigation is complete, the District Attorney is required to complete a thorough review of the investigation and prepare a report summarizing the investigation and documenting her conclusions. A copy of this report is to be submitted to the foreperson of the Sonoma County Grand Jury. The following report has been prepared by the Sonoma County District Attorney. It includes a summary of facts surrounding this incident, as well as specific conclusions.

II. SCOPE OF REVIEW

The sole purpose of this criminal investigation and review is to establish the presence or absence of any criminal liability on the part of the involved law enforcement employee(s).

III. STANDARD OF REVIEW

The District Attorney, as the chief law enforcement official of Sonoma County, and as the person responsible for deciding what cases to prosecute within this jurisdiction, has the responsibility to review and approve the filing of all criminal cases. The discretion to exercise this function and to charge a person with a crime is not without limit.

The standard to be applied by the District Attorney in filing criminal charges is accurately

expressed in a publication of the California District Attorneys Association entitled, *Uniform Crime Charging Standards*.¹ It provides:

The prosecutor should consider the probability of conviction by an objective fact-finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.

Additional restraint on the charging authority is found in *The California Rules of Professional Conduct, Rule 5-110*, which provides that an attorney in government service (this definition includes prosecutors) shall not institute or cause to be instituted criminal charges when the member knows or should know that the charges are not supported by probable cause.

The standard for charging a crime is high because the burden of proof required at trial is quite high, i.e. proof beyond a reasonable doubt. Proof beyond a reasonable doubt is the highest burden of proof under the law.

IV. SUMMARY OF FACTS

The following is a summary of facts intended to assist the reader in understanding this report and its conclusion. It is not a substitute for the reports, interviews, and other evidence from which it is derived. It is, however, an accurate composite of what the District Attorney believes the material facts in this case to be.

On the evening of January 14, 2018, Rohnert Park Department of Public Safety Sergeant Kelly Koffler and Officers Daniel Hargreaves, Kieran Keaney and Kyle Pinney were on duty. Each was dressed in full Rohnert Park Department of Public Safety uniform. Their law enforcement badges were displayed on the front of their persons, and the agency's patches were displayed on each shoulder. Sergeant Brendan Tatum was also on duty and assigned to the city's fire division, but retained legal status as a law enforcement officer. Sergeant Tatum was initially dressed in fire personnel clothing, but subsequently placed on a Rohnert Park Department of Public Safety ballistic vest that displayed his law enforcement badge, rank and name on its front. Neither of these five individuals had consumed alcohol in the twenty-four hours preceding the incident, nor had any of the five suffered a medical condition or ingested medication that might impair his ability to think and act as a law enforcement officer.

The department's building is plainly marked with the words "ROHNERT PARK DEPARTMENT

¹ California District Attorneys Association, *Uniform Crime Charging Standards* (1996) p. 12.

OF PUBLIC SAFETY” in large-scale, capital lettering that is displayed above its public entrance at the front of the building. A video surveillance camera is positioned at the fore of the building. Also in front of the building, a few feet from its public entrance, is an elevated concrete platform that is utilized as a seating area.

At 10:38 p.m., Ramirez-Frati stood outside the public entrance to the Rohnert Park Department of Public Safety and walked to its front door. Ramirez-Frati was armed with a .22 caliber semi-automatic handgun. He grabbed its handle and attempted to open the door, but found it locked. He turned and walked to the area immediately fronting the building. At 10:39 p.m., immediately outside the front entrance to the building, Ramirez-Frati fired three rounds from his handgun.

At that time, the building was occupied by officers and civilian staff. Sergeant Koffler and Officer Hargreaves were inside the department’s building on its first floor. The sergeant and officer heard the sound of the gunfire in the form of three distinct gunshots occurring just outside of the building. Sergeant Koffler advised his dispatch of the gunfire and exited the station from its rear entrance to investigate. Outside the station, the sergeant encountered a witness who pointed to the front of the police station and stated, “There’s a guy with a gun over there and he’s shooting.” Sergeant Koffler looked in the direction indicated and saw Ramirez-Frati, standing on top of the concrete seating platform that fronted the public entrance to the police station. Each of Ramirez-Frati’s arms were outstretched, as if to indicate a cross. Sergeant Koffler saw that Ramirez-Frati was holding a handgun in his right hand and a bottle of apparent alcohol in his left. The sergeant directed the witness to leave the area.

Sergeant Koffler drew his service handgun, identified himself to Ramirez-Frati as a police officer and ordered him to drop his firearm and get down on the ground. Ramirez-Frati ignored the directive and replied, “Kill me.” The sergeant repeated the command. Ramirez-Frati again refused compliance and replied, “Kill me.” Over the next minute, Sergeant Koffler ordered Ramirez-Frati to drop his gun and or get on the ground approximately ten additional times. On each instance, Ramirez-Frati refused compliance and repeatedly told the sergeant, “Kill me.”

Officer Hargreaves had also exited the building with his duty AR-15 rifle, and by that time had taken a position on the North West corner of its roof. That location was above and North East of Ramirez-Frati’s position. Officer Hargreaves set up at that location, trained his rifle on Ramirez-Frati and monitored the incident.

Sergeant Koffler realized an increased potential for Ramirez-Frati to kill or otherwise shoot him, and assessed his immediate location for a position that provided sufficient cover from Ramirez-Frati’s gunfire. However, there was none. The sergeant was situated North West of Ramirez-Frati’s position. The two individuals were approximately thirty-three yards apart from each other and separated only by a grass lawn. There were no immediate structures or barriers sufficiently tall or protective available to the sergeant. Sergeant Koffler utilized the most effective cover immediately available to him, which was a concrete seating platform that was approximately eighteen inches tall. The sergeant dropped to the ground and positioned himself behind that

barrier. On the soil, the sergeant laid on his stomach, his head and hands resting immediately at or behind the barrier, his torso extending behind it. Ramirez-Frati was positioned to the front of that barrier, and stood fully upright atop a raised concrete seating platform that was approximately twenty-one inches tall. Consequently, Ramirez-Frati stood at an elevated position relative to the sergeant, and was able to look downward upon him.

Sergeant Koffler oriented his flashlight and body worn camera toward Ramirez-Frati to illuminate him and record the incident. The sergeant updated his dispatch, requested a negotiator from the Sonoma County Sheriff's Office to respond to the scene, and requested support from available law enforcement officers.

Officer Pinney was inside the building and heard Sergeant Koffler's statements to dispatch and the subsequent radio traffic describing the incident. The officer exited the building with his duty AR-15 rifle and took a position North East of Ramirez-Frati. Officer Pinney set up at that location, trained his rifle on Ramirez-Frati and monitored the incident.

Officer Keaney was traveling in his patrol car in the field, and heard Sergeant Koffler's statements to dispatch and the subsequent radio traffic describing the incident. The officer returned to the station, exited his patrol vehicle with his duty AR-15 rifle and took a position North West of Ramirez-Frati. Officer Keaney set up at that location, trained his rifle on Ramirez-Frati and monitored the incident.

Sergeant Tatum was inside Fire Station 2 and received a telephone call from Officer Huffaker. Huffaker briefed the sergeant on the incident. Sergeant Tatum placed his ballistic vest on his person and drove to the Rohnert Park Department of Public Safety building. Sergeant Tatum exited his vehicle with his duty AR-15 rifle and took a position North East of Ramirez-Frati. Sergeant Tatum set up at that location, trained his rifle on Ramirez-Frati and monitored the incident.

At approximately 10:42 p.m., three minutes into the contact, Sergeant Koffler attempted to build rapport with Ramirez-Frati to resolve the incident without the use of force. The sergeant asked Ramirez-Frati what his first name was and learned it. From that point forward, the sergeant addressed Ramirez-Frati as "Anthony," and utilized a supportive tone of voice and demeanor when speaking to him. Ramirez-Frati spoke solely to Sergeant Koffler for nearly the entire duration of the incident. Sergeant Koffler asked Ramirez-Frati why he initiated the incident, to which he replied "I'm tired of living. I'm done. You guys are going to have to kill me." The sergeant repeatedly attempted to assure Ramirez-Frati that no officer wanted to shoot or harm him, and that the officers wanted to help him. Sergeant Koffler repeatedly offered to arrange supportive assistance for Ramirez-Frati, asking him if he could contact Ramirez-Frati's family members, friends or doctors for him. Ramirez-Frati replied, "I've had thousands of dollars spent on psychiatrists, they can't help me anymore."

Sergeant Koffler was cognizant that there were multiple residential apartment units directly behind

his position and in Ramirez-Frati's line of fire should Ramirez-Frati discharge his gun toward him. The sergeant had knowledge that families and small children were residing in those apartments at that time. He communicated that fact to Ramirez-Frati several times. On one instance, Ramirez-Frati replied, "I don't care."

In the fifty-three minutes subsequent to this, Sergeant Koffler continued to attempt to resolve the situation verbally and without the use of force by offering support and assistance to Ramirez-Frati. On each instance, Ramirez-Frati refused the assistance offered to him. Throughout this period of time, the sergeant ordered Ramirez-Frati to put his firearm down and or sit down on the ground approximately sixty-eight times. On each instance, Ramirez-Frati refused compliance, and held his firearm in his right hand throughout the near entirety of the incident. During this period of time, Ramirez-Frati told the sergeant "Kill me" approximately fourteen times. Ramirez-Frati told the sergeant "Shoot me" approximately eleven times. Ramirez-Frati told the sergeant, "I'm going to make it happen. I'm going to force you to shoot me. It's going to happen," and, "What do I have to do to make you fucking shoot me?" Sergeant Koffler again attempted to assure Ramirez-Frati that no officer wanted to shoot or harm him. Ramirez-Frati replied, "If you want to make me shoot at you, if that's the only way it's going to go down, then I will shoot at you, Motherfucker." Ramirez-Frati told the sergeant, "I have really good aim," and, "I can hit you with a fucking .22 from here." Further, Ramirez-Frati had alerted to the fact that multiple uniformed officers had staged around his position. Several of those officers held AR-15 rifles that were easily recognizable as high-powered firearms. Upon alerting to the presence of those officers, Ramirez-Frati stepped down from his concrete platform and stepped toward a grouping of three of them, shifting his attention to them. One of the officers ordered Ramirez-Frati to stop walking. Sergeant Koffler yelled at Ramirez-Frati to maintain his attention on him, and not the other officers. Ramirez-Frati returned to the top of his concrete platform and turned his attention back to Sergeant Koffler.

Within that fifty-three minute time frame, at 11:16 p.m., Ramirez-Frati's mother, learned of the incident and telephoned the department's dispatch. She advised the dispatcher that her son was the subject of the incident, and that he suffered from severe depression. She advised dispatch that she had reason to believe that Ramirez-Frati had recently ingested an entire bottle of klonopin prescription medication. The dispatcher relayed this information to the officers on scene.

At approximately 11:36 p.m., after nearly one hour of sustained refusal to comply with the directives of or to accept assistance from Sergeant Koffler, Ramirez-Frati stepped down from his concrete platform and onto the grass that separated his position from the sergeant's. At that instant, the sergeant noted that Ramirez-Frati's demeanor had changed and increased in aggression. Sergeant Koffler noted that Ramirez-Frati was now crossing the grass and walking directly to him with a marked stride. The sergeant observed that Ramirez-Frati was holding his gun in his right hand. The sergeant could hear Ramirez-Frati repeatedly clicking the safety on his gun on and off. Sergeant Koffler yelled for Ramirez-Frati to stop approximately five times. Twice Ramirez-Frati paused, but refused to fully comply and again walked toward the sergeant. Sergeant Koffler yelled for Ramirez-Frati to put his gun down and or sit down on the ground approximately twenty times. On each instance, Ramirez-Frati refused compliance. As Ramirez-Frati crossed the grass and

walked straight at Sergeant Koffler, he told the sergeant “Shoot me” approximately twenty-three times.

As this occurred, Sergeant Koffler realized that he was rapidly losing protective cover because Ramirez-Frati was increasing in proximity to him. At a specific point, the sergeant noted that Ramirez-Frati was now so close to his position that he had essentially lost all cover, his head and person now exposed to Ramirez-Frati’s potential gunfire. The sergeant noted that he was still laying on his stomach, and that if Ramirez-Frati pointed his firearm at him there would be insufficient time to recognize that fact because of the proximity Ramirez-Frati had achieved. Sergeant Koffler recalled that approximately fifty-five minutes earlier, Ramirez-Frati had walked to the public entrance of a staffed police station and apparently fired off multiple rounds with a handgun. The sergeant recalled that Ramirez-Frati had told him, “I’m tired of living. I’m done. You guys are going to have to kill me,” and, “Psychiatrists can’t help me anymore.” The sergeant recalled that Ramirez-Frati had told him, “I’m going make it happen. I’m going to force you to shoot me. It’s going to happen,” and, “What do I have do to make you fucking shoot me?” The sergeant recalled that Ramirez-Frati had told him, “If you want to make me shoot at you, if that’s the only way it’s going to go down, then I will shoot at you, Motherfucker.” The sergeant recalled that Ramirez-Frati had held a gun in his hand and told him, “I have really good aim,” and, “I can hit you with a fucking .22 from here.” Sergeant Koffler assessed the totality of those facts, and formed the belief that because neither he nor any officer had fired his or her weapon at Ramirez-Frati by that point in time, Ramirez-Frati had concluded that he had no option but to shoot the sergeant to draw the police gunfire that he had repeatedly demanded throughout the contact. Further, the sergeant recalled that Ramirez-Frati had alerted to the fact that there were now numerous police officers staged around him, and that Ramirez-Frati had reasonable knowledge that several of those officers had trained their AR-15 rifles on him. By this point in time, Ramirez-Frati had walked to within approximately ten to twelve yards of the sergeant. At that instant, under the totality of those facts, Sergeant Koffler realized that he had lost all protective cover, and believed that Ramirez-Frati was about to shoot him for the purpose of provoking police gunfire and achieving his stated objective of committing suicide by those means. Thereafter, at approximately 11:39 pm, Sergeant Koffler fired his weapon approximately twice at Ramirez-Frati, for the purpose of defending his life.

From the roof of the building, Officer Hargreaves assessed the totality of the situation in a manner identical to that noted above. Officer Hargreaves noted that it was very apparent to him that Ramirez-Frati was looking for the closest person to use to force the officers to shoot him and achieve his stated objective of committing suicide by those means. In the final moment prior to law enforcement gunfire, Officer Hargreaves noted that Ramirez-Frati had gotten so close to Sergeant Koffler, he felt certain that Ramirez-Frati was about to kill the sergeant. At that point in time, Officer Hargreaves fired his weapon approximately two to three times at Ramirez-Frati, for the purpose of defending Sergeant Koffler’s life.

From his position, Officer Pinney assessed the totality of the situation in a manner identical to that noted above. Officer Pinney noted that Ramirez-Frati had closed the gap between himself and

Sergeant Koffler quickly. He noted that Ramirez-Frati had gotten so close to the sergeant, that the reaction time available to him and his fellow officers to protect Sergeant Koffler was now greatly reduced. The officer noted that in the moment prior to law enforcement gunfire, Sergeant Koffler had ordered Ramirez-Frati not to come any closer, but that Ramirez-Frati defied the order and stepped toward the sergeant. At that point in time, Officer Pinney fired his weapon approximately one time at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life.

From his position, Officer Keaney assessed the totality of the situation in a manner identical to that noted above. Officer Keaney noted that throughout the contact, Ramirez-Frati was not responding to any orders directed at him to drop his gun, to get down on the ground, or to stop walking. The officer noted that when Ramirez-Frati stepped down from his concrete seating platform and crossed the grass toward Sergeant Koffler, Ramirez-Frati's demeanor had markedly changed and his aggression had increased. The officer noted that Ramirez-Frati appeared to walk straight at the sergeant with intent to shoot him. At that point in time, Officer Keaney fired his weapon approximately three times at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life.

From his position, Sergeant Tatum assessed the totality of the situation in a manner identical to that noted above. Sergeant Tatum drew on his training and experience as a law enforcement officer, and noted prior situations in which suspects would listen to reason and constructively dialogue with an officer. Sergeant Tatum noted that, by contrast, Ramirez-Frati appeared intent on drawing police gunfire and refused to reason with Sergeant Koffler. Sergeant Tatum noted prior situations in which law enforcement demonstrated an overwhelming presence, and in its face, a suspect would recognize defeat and surrender. The sergeant noted that, by contrast, Ramirez-Frati was wholly unresponsive to the current situation and its magnitude of police presence. At that point in time, Sergeant Tatum fired his weapon approximately one time at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life.

The body worn camera video capturing this incident indicates that all five law enforcement officers fired their weapons in very close succession to each other.

Ramirez-Frati sustained law enforcement gunfire and fell to the ground. Four seconds subsequent to the first shot fired by law enforcement, Sergeant Koffler observed that Ramirez-Frati was on the ground, and ordered all officers to cease their fire in order to mitigate harm to him. Ramirez-Frati rolled side to side on the ground for a few seconds, then got up on his knees and extended his upper body fully upright. Sergeant Koffler saw and confirmed that Ramirez-Frati was no longer holding his gun, and immediately ran to Ramirez-Frati and placed him into handcuffs. Officers located Ramirez-Frati's semi-automatic handgun on the grass, a few feet from him. His gun appeared to have been struck by a law enforcement round, and was now broken into two pieces.

Emergency medical personnel had been staged on scene and immediately rendered medical aid to Ramirez-Frati. Ramirez-Frati was rushed by ambulance to Santa Rosa Memorial Hospital, where he was treated for multiple gunshot wounds. Upon arrival to the hospital, a blood sample was

drawn from Ramirez-Frati, and its toxicology screen returned positive for amphetamine, benzodiazepines and marijuana. Ramirez-Frati survived his wounds.

In a subsequent law enforcement interview, Ramirez-Frati admitted to detectives that the day of the incident, he had been planning to commit “suicide by police.” He admitted that he went to the station that evening to achieve that objective. He admitted that he fired three rounds from his gun at that time and location. He admitted that he caused the officers shoot him. When asked how he accomplished that, Ramirez-Frati replied, “I walked toward them.”

In a subsequent law enforcement interview, Ramirez-Frati’s mother stated to detectives that Ramirez-Frati lived with her. She stated that Ramirez-Frati was extremely suicidal and spoke daily about wanting to die. She stated that Ramirez-Frati had spoken to her of committing “suicide by police.” She stated that Ramirez-Frati owned a firearm, which she did not allow in her home because of his suicidal state. She stated that the day of the incident, Ramirez-Frati had been repeatedly speaking of suicide, and that at 10:11 p.m., just prior to initiating the incident, Ramirez-Frati sent her a text message that stated “I love you. I’m sorry.”

In a subsequent law enforcement interview, John Doe stated to detectives that he and Ramirez-Frati were friends. He stated that the evening prior to the incident, Ramirez-Frati had spoken of wanting to commit suicide, and wanting to die in a shootout with the police.

Detectives processed the incident scene and located three expended .22 casings just outside the public entrance to the Rohnert Park Department of Public Safety building, where Ramirez-Frati had stood when he fired his gun. They further located an apparent bullet strike on the West wall of the building, above and to the left of its public entrance.

Ramirez-Frati was subsequently charged by way of Felony Criminal Complaint for his conduct in this incident in Sonoma County Criminal Court SCR 712391. On June 11, 2018, Ramirez-Frati entered pleas of No Contest to Felony Penal Code section 69 Resisting Executive Officer by Means of Threat or Violence, and Admitted an enhancement under section 12022(a)(1) Personally Armed with Firearm; Felony Penal Code section 246 Malicious Discharge of Firearm at an Occupied Building; and Felony Penal Code section 246.3(a) Discharge of Firearm in a Grossly Negligent Manner that could Result in Injury or Death to a Person. The Court accepted Ramirez-Frati’s pleas of No Contest and found him Guilty of these three Felony offenses. Ramirez-Frati is currently pending sentencing on this matter.

V. STATEMENT OF THE LAW

The sole issue to be resolved is whether the shooting of Antonio Ramirez-Frati was unlawful because the force used by the officers was not reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose; or, stated another way, whether the shooting was

lawful because the force used by the officers was reasonably necessary under the circumstances to accomplish a lawful law enforcement purpose. The issue must be resolved as to each of the five law enforcement officers individually.

Deciding the issue involves analyzing several key principles of law. A brief legal summary is included to assist the reader in understanding this report and its conclusions. While it is by no means an exhaustive explication of the controlling principles of law to be applied to this case, it is a correct statement of the law to be applied. The legal authority for lawful self-defense and defense of others applies to both fatal and non-fatal outcomes, and is set forth below.

A peace officer has the authority to make an arrest of an individual if the facts presented substantiate probable cause to believe that a crime has been committed. An individual has a duty to submit to lawful arrest.²

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest, to prevent the escape, or to overcome resistance.³

A peace officer may also detain an individual upon a reasonable suspicion that the person to be detained has engaged in criminal activity. The purpose for the detention is to allow the peace officer an opportunity to confirm or dispel the suspicion of criminal activity. The standard to be applied for a lawful detention is somewhat less than what is required for an arrest.⁴

An individual has a duty to submit to lawful detention.

A peace officer who has probable cause to believe that a person to be arrested has committed a public offense may use reasonable force to effectuate the arrest, to prevent escape, or to overcome resistance.

Any person, including a peace officer has a right to use reasonable force in self-defense or for the defense of others.⁵ A person can be said to have acted in lawful self-defense or for the defense of others if all of the following exist: the person reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury; the person reasonably believed that the immediate use of deadly force was necessary to defend against that danger; the person used no more force than was reasonably necessary to defend against that danger.⁶

² California Penal Code Sections 834 and 834a

³ California Penal Code Section 835a

⁴ *United States v. Sokolow* (1989) 490 U.S. 1; *Terry v. Ohio* (1968) 392 U.S. 1

⁵ California Penal Code sections 692-694

⁶ See Calcrim 505

When deciding whether the person's beliefs were reasonable, one must consider all of the circumstances as they were known and appeared to the person at the time, as well as what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.⁷

Both self-defense and defense of others are complete defenses to a homicide and make the homicide justifiable.⁸

There are also some special rules that apply to the use of deadly force by peace officers who are in the lawful performance of their duties. Use of deadly force while in the line of duty is justified, and therefore not unlawful, provided all of the following exist: the person is a peace officer; the killing was committed while performing any legal duty; the killing was necessary to accomplish that lawful purpose; and the peace officer had probable cause to believe that the person killed posed a threat of serious physical harm, either to the peace officer, or to others.⁹

In such situations, there is a presumption that the killing is justified.¹⁰

In the leading case of *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-83, the California Supreme Court succinctly and definitely articulates the law of self-defense (which applies equally to the defense of others):

“For a killing to be self-defense, the defendant must actually and reasonably believe in the need to defend. (Citations omitted.) If the belief subjectively exists but is objectively unreasonable there is “imperfect self-defense,” ie., “the defendant is deemed to have acted without malice and cannot be convicted of murder, but can be convicted of manslaughter.” (Citations omitted.) To constitute “perfect self-defense,” ie., to exonerate the person completely, the belief must also be objectively reasonable. (Citations omitted.) As the legislature has stated, ‘[T]he circumstances must be sufficient to excite the fears of a reasonable person...’ (Citations omitted.) Moreover, for either perfect or imperfect self-defense, the fear must be of imminent harm. ‘Fear of future harm-no matter how great the fear and no matter how great the likelihood of the harm-will not suffice. The defendant’s fear must be of imminent danger to life or great bodily injury.’ (Citations omitted.)

Although the belief in the need to defend must be objectively reasonable, a jury must consider what “would appear necessary to a reasonable person in a similar situation and with similar knowledge...” (Citations omitted.) It judges reasonableness “from the point of view of a reasonable person in the position of defendant...” (Citations omitted.)

⁷ See Calcrim 505

⁸ California Penal Code section 199; See Calcrim 505

⁹ See Calcrim 507; Penal Code sections 196, 199

¹⁰ See Calcrim 507; Penal Code sections 189.5, 199

To do this, it must consider all of the “fact and circumstances...in determining whether the defendant acted in a manner in which a reasonable man would act in protecting his own life or bodily safety (Citations omitted.) As we stated long ago, ‘...a defendant is entitled to have a jury take into consideration all of elements in the case which might be expected to operate in his mind...’ (Citations omitted.)

In a leading California Appellate decision, *People v. Arias* (1989) 215 Cal.App.3d 1178, 1188, the court defines what is meant by *imminent harm* as applied to the law of self-defense:

“The definition of imminence in California has long been settled. ‘A person whose life has been threatened by another, whom he knows or has reason to believe has armed himself with a deadly weapon for the avowed purpose of taking his life or inflicting great personal injury upon him, may reasonably infer, when a hostile meeting occurs, that his adversary intends to carry his threats into execution. The previous threats alone, however, unless coupled at the time with an apparent design then and there to carry them into effect, will not justify a deadly assault by the other party. There must be such a demonstration of an immediate intention to execute the threat as to induce a reasonable belief that the party threatened will lose his life or suffer serious bodily injury unless he immediately defends himself against the attack of his adversary. The philosophy of the law on this point is sufficiently plain. A previous threat alone, unaccompanied by an immediate demonstration of force at the time of the reencounter [*sic*], will not justify or excuse an assault, because it may be that the party making the threat has relented or abandoned his purpose, or his courage may have failed, or the threat may have been only idle gasconade, [*sic*] made without any purpose to execute it. On the other hand, if there be at the time such a demonstration of force...[indicating] that his adversary was on the eve of executing the threat, and that his only means of escape from death or great bodily injury was immediately to defend himself against impending danger...’ (Citations omitted.)

In *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, the Court of Appeal explained the appropriate stand for reviewing an officer’s use of deadly force:

“‘The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. ... [T]he question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. [Citations.]’” In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required. [Internal citations omitted.]”

(*Brown v. Ransweiler, supra*, 171 Cal.App.4th at 527-528.)

“We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.’[Citations.]” (*Id.* at 528.)

Where potential danger, emergency conditions, or other exigent circumstances exist, “[t]he Supreme Court's definition of reasonableness is ... “comparatively generous to the police”” “In effect, “the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. . . .”” A police officer's use of deadly force is reasonable if ““the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”” “Thus, “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”” [Internal citations omitted].

VI. LEGAL ANALYSIS

The law imposes upon law enforcement officers the duty to behave reasonably under the circumstances presented to them. Antonio Ramirez-Frati travelled to the Rohnert Park Department of Public Safety building for the purpose of committing suicide. Ramirez-Frati intended to achieve this objective by posing a lethal threat to its officers and drawing police gunfire in response. Ramirez-Frati brought a loaded, semi-automatic handgun with him to the station, and fired three live rounds in front of its public entrance to set his objective in motion. Sergeants Kelly Koffler and Brendan Tatum, and Officers Daniel Hargreaves, Kieran Keaney and Kyle Pinney responded to the live gunfire. A witness pointed to Ramirez-Frati and told Sergeant Koffler, “There’s a guy with a gun over there, and he’s shooting.” Sergeant Koffler looked in the direction indicated, and saw Ramirez-Frati standing in front of the front entrance to the station, with a gun in his right hand. The sergeant and officers had the legal authority and duty to detain Ramirez-Frati and render the situation safe. Consequently, each officer was lawfully situated. The sergeants and officers exhausted all means to resolve the incident verbally and without the use of force. For nearly one hour, the officers repeatedly offered help and assistance to Ramirez-Frati. Ramirez-Frati refused all attempts to resolve the incident verbally and was intent on drawing police gunfire to achieve his stated objective of committing suicide by those means. Ramirez-Frati stated that he would shoot Sergeant Koffler, and at the conclusion of the incident, advanced on him with a loaded, semi-automatic handgun. Sergeant Koffler lost all protective cover, and had no further time or opportunity to resolve the incident verbally. Each of the five law enforcement officers believed that because no officer had fired his or her weapon at Ramirez-Frati by that point in time, Ramirez-Frati had concluded that he had no option but to shoot the sergeant to draw the police gunfire he had repeatedly demanded throughout the contact. In the instant prior to discharging their weapons, Sergeants Koffler and Tatum, and Officers Hargreaves, Keaney and Pinney each concluded that Ramirez-Frati was about to slay Sergeant Koffler to provoke the police gunfire he sought. The sergeants and officers restrained themselves from discharging their weapons until the threat posed by Ramirez-Frati became imminent. They deployed firearms because Ramirez-Frati deployed a

firearm, and therefore the amount of force utilized was reasonable. As set forth in the preceding section, the legal authority for self-defense, and defense of others, allows for defensive conduct under these circumstances.

It is worth noting that the language of that legal authority incorporates the totality of circumstances known to a peace officer, when considering the reasonableness of his or her actions. It further holds that the concept of reasonableness must be judged from the perspective of a reasonable officer on scene, at the time of the incident, and that in calculating whether the amount of force used was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required. Further, that legal authority for self-defense, and defense of others, references the dangerous and complex world that peace officers face on a daily basis.

SERGEANT KELLY KOFFLER

Sergeant Koffler noted that after nearly one hour of sustained refusal to comply with directives or accept assistance, Ramirez-Frati had stepped down from his concrete platform and onto the grass that separated his position from the sergeant's. At that instant, the sergeant noted that Ramirez-Frati's demeanor had changed and increased in aggression. Sergeant Koffler noted that Ramirez-Frati was now crossing the grass and walking directly to him with a marked stride. The sergeant observed that Ramirez-Frati was holding his gun in his right hand. The sergeant could hear Ramirez-Frati repeatedly clicking the safety on his gun on and off. Sergeant Koffler yelled for Ramirez-Frati to stop approximately five times. Twice Ramirez-Frati paused, but refused to fully comply and again walked toward the sergeant. Sergeant Koffler yelled for Ramirez-Frati to put his gun down and or sit down on the ground approximately twenty times. On each instance, Ramirez-Frati refused compliance. As Ramirez-Frati crossed the grass and walked straight at Sergeant Koffler, he told the sergeant "Shoot me" approximately twenty-three times.

As this occurred, Sergeant Koffler realized that he was rapidly losing protective cover because Ramirez-Frati was increasing in proximity to him. At a specific point, the sergeant noted that Ramirez-Frati was now so close to his position that he had essentially lost all cover, his head and person now exposed to Ramirez-Frati's potential gunfire. Sergeant Koffler recalled that approximately fifty-five minutes earlier, had walked to the public entrance of a staffed police station and fired off multiple rounds with a handgun. The sergeant recalled that Ramirez-Frati had told him, "I'm tired of living. I'm done. You guys are going to have to kill me," and, "Psychiatrists can't help me anymore." The sergeant recalled that Ramirez-Frati had told him, "I'm going to make it happen. I'm going to force you to shoot me. It's going to happen," and, "What do I have to do to make you fucking shoot me?" The sergeant recalled that Ramirez-Frati had told him, "If you want to make me shoot at you, if that's the only way it's going to go down, then I will shoot at you, Motherfucker." The sergeant recalled that Ramirez-Frati had held a gun in his hand and told him, "I have really good aim," and, "I can hit you with a fucking .22 from here." Sergeant Koffler assessed the totality of those facts, and formed the belief that because neither he nor any officer had fired his or her weapon at Ramirez-Frati by that point in time, Ramirez-Frati had concluded

that he had no choice but to shoot the sergeant to draw the police gunfire that he had repeatedly demanded throughout the contact. Further, the sergeant recalled that Ramirez-Frati had alerted to the fact that there were now numerous police officers staged around him, and that Ramirez-Frati had reasonable knowledge that several of those officers had trained their AR-15 rifles on him. By this point in time, Ramirez-Frati had walked to within approximately ten to twelve yards of the sergeant. At that instant, under the totality of those facts, Sergeant Koffler realized that he had lost all protective cover, and believed that Ramirez-Frati was about to slay or shoot him for the purpose of provoking police gunfire and achieving his stated objective of committing suicide by those means. Thereafter, Sergeant Koffler fired his weapon approximately twice at Ramirez-Frati, for the purpose of defending his life. Based on these facts, it was reasonable for Sergeant Koffler to use lethal force to defend himself.

OFFICER DANIEL HARGREAVES

Officer Hargreaves assessed the totality of the situation in a manner identical to that noted above. Officer Hargreaves noted that it was very apparent to him that Ramirez-Frati was looking for the closest person to use to force the officers to shoot him and achieve his stated objective of committing suicide by those means. In the final moment prior to law enforcement gunfire, Officer Hargreaves noted that Ramirez-Frati had gotten so close to Sergeant Koffler, he felt certain that Ramirez-Frati was about to slay the sergeant. At that point in time, Officer Hargreaves fired his weapon approximately two to three times at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life. Based on these facts, it was reasonable for Officer Hargreaves to use lethal force to defend Sergeant Koffler.

OFFICER KYLE PINNEY

Officer Pinney assessed the totality of the situation in a manner identical to that noted above. Officer Pinney noted that Ramirez-Frati had closed the gap between himself and Sergeant Koffler quickly. He noted that Ramirez-Frati had gotten so close to the sergeant, that the reaction time available to he and his fellow officers to protect Sergeant Koffler was now greatly reduced. The officer noted that in the moment prior to law enforcement gunfire, Sergeant Koffler had ordered Ramirez-Frati not to come any closer, but that Ramirez-Frati defied the order and stepped toward the sergeant. At that point in time, Officer Pinney fired his weapon approximately one time at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life. Based on these facts, it was reasonable for Officer Pinney to use lethal force to defend Sergeant Koffler.

OFFICER KIERAN KEANEY

Officer Keaney assessed the totality of the situation in a manner identical to that noted above. Officer Keaney noted that throughout the contact, Ramirez-Frati was not responding to any orders directed at him to drop his gun, to get down on the ground, or to stop walking. The officer noted that when Ramirez-Frati stepped down from his concrete seating platform and crossed the grass

toward Sergeant Koffler, Ramirez-Frati's demeanor had markedly changed and his aggression had increased. The officer noted that Ramirez-Frati appeared to walk straight at the sergeant with intent to slay him. At that point in time, Officer Pinney fired his weapon approximately three times at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life. Based on these facts, it was reasonable for Officer Keane to use lethal force to defend Sergeant Koffler.

SERGEANT BRENDAN TATUM

Sergeant Tatum assessed the totality of the situation in a manner identical to that noted above. Sergeant Tatum drew on his training and experience as a law enforcement officer, and noted prior situations in which suspects would listen to reason and constructively dialogue with an officer. Sergeant Tatum noted that, by contrast, Ramirez-Frati appeared intent on drawing police gunfire and refused to reason with Sergeant Koffler. Sergeant Tatum noted prior situations in which law enforcement demonstrated an overwhelming presence, and in its face, a suspect would recognize defeat and surrender. The sergeant noted that, by contrast, Ramirez-Frati was wholly unresponsive to the current situation and its magnitude of police presence. At that point in time, Sergeant Tatum fired his weapon approximately one time at Ramirez-Frati, for the purpose of defending Sergeant Koffler's life. Based on these facts, it was reasonable for Sergeant Tatum to use lethal force to defend Sergeant Koffler.

VII. CONCLUSION

Sergeants Kelly Koffler and Brendan Tatum, and Officers Daniel Hargreaves, Kieran Keane and Kyle Pinney responded to live gunfire occurring at the public entrance to their building. They encountered Antonio Ramirez-Frati and attempted to render the situation safe. They exhausted all means of resolving the incident verbally and without the use of force. Ramirez-Frati behaved irrationally throughout the contact and stated he would shoot Sergeant Koffler, then advanced on him with a loaded semi-automatic handgun. While in the lawful performance of their duties, the sergeants and officers were required to use lethal force to defend Sergeant Koffler.

Ramirez-Frati's behavior and statements, throughout the contact, would convey to any reasonable person that he or she was in imminent peril of death or serious bodily injury. The use of lethal force was a reasonable response, and justified under these circumstances. Therefore the actions of these five law enforcement officers were reasonable under the circumstances with which they were faced, and legally justified. Accordingly, based on a review of the facts and relevant law, no criminal charges should be filed against Sergeants Kelly Koffler or Brendan Tatum, or Officers Daniel Hargreaves, Kieran Keane or Kyle Pinney at this time.



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